

CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 616

THE UNITED STATES OF AMERICA, APPELLANT

vs.

LEAMON RESLER AND LEAMON RESLER, DOING BUSINESS AS RESLER TRUCK LINE AND AS BRADY TRUCK LINE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

FILED DECEMBER 10, 1940

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UNITED STATES VS. LEAMON RESLER

1 In United States District Court for the
District of Colorado

Sitting at Denver

[Caption omitted.]

9197

THE UNITED STATES OF AMERICA

vs.

LEAMON RESLER, DOING BUSINESS AS RESLER TRUCK LINE AND AS
BRADY TRUCK LINE

Information: Violation of Motor Carrier Act

Order directing filing of information

July 25, 1940

At this day comes Joseph N. Lilly, Esquire, Assistant District Attorney, who prosecutes the pleas of the United States in this behalf, and presents to the court now here an information for violation of Motor Carrier Act against Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line.

And thereupon, it is ordered by the court that the said information be filed.

2 In United States District Court for the
District of Colorado

[Title omitted.]

Information

Filed July 25, 1940

Now comes Thomas J. Morrissey, United States Attorney in and for the District of Colorado, who for the United States in this behalf prosecutes, in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and to be informed as follows, to wit:

Count 1

That on, to wit, August 28, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and

UNITED STATES VS. LEAMON RESLER

foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, one box each of iron bolts, small arms cartridges, metal alarm clocks, plain iron screws, yard stick wood, enameled ware, fly swatters, and 2 boxes of putty in cans, of an aggregate weight of, to wit, 535 pounds, for compensation, to wit, \$2.23, which said property was then and there moving in interstate commerce in the course of through transportation from Hibbard, Spencer, and Bartlett, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 2

That on, to wit, August 3, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, one box of putty, two cartons of oil cans and one roll of wire, of an aggregate weight of, to wit, 237 pounds, for compensation, to wit, 90 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Paxton and Gallagher, Omaha, Nebraska, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 3

That on, to wit, August 23, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 15 cartons of bicycles and 1 carton of equipment, of an aggregate weight of, to wit, 1,312 pounds, for compensation, to wit, \$8.53, which said property was then and there moving in interstate commerce in the course of through transportation from Arlod Schwinn and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 4

That on, to wit, April 15, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant,
5 then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 4 bundles of forks, of an aggregate weight of, to wit, 115 pounds, for compensation, to wit, 40 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Hibbard, Spencer, Bartlett and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public

UNITED STATES VS. LEAMON RESLER

convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 5

That on, to wit, July 7, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 2 crates of bicycles, of an aggregate weight of, to wit, 118 pounds, for compensation, to wit, 65 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Arnold Schwinn and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 6

That on, to wit, July 20, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, one box each of hand saws, lead shot, rake head iron, one bundle of wooden handles, and three boxes of filters, of an aggregate weight of, to wit, 115

pounds, for compensation, to wit, 52 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Hibbard, Spencer, Bartlett and Company, Chicago, Illinois, consigner, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code).

Count 7

That on, to wit, August 22, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 7 boxes of sheet steel ware nested solid, of an aggregate weight of, to wit, 110 pounds, for compensation, to wit, 39 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Hibbard, Spencer, Bartlett and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

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Count 8

That on, to wit, May 11, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an

interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 3 cartons of candy, of an aggregate weight of, to wit, 168 pounds, for compensation, to wit, 47 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Reed Candy Company, Chicago, Illinois, consignor, to Richer Brothers, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 9

That on, to wit, April 29, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 6 boxes gas lamps with shades, 13 boxes gas lanterns with globes, 1 box brass hardware and 1 box gas self-heating sad irons, of an aggregate weight of, to wit, 102 pounds, for compensation, to wit, 59 cents, which said property was then and there moving in interstate commerce in the course of through transportation from Coleman Lamp and Stove Company, Wichita, Kansas, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 10

That on, to wit, June 21, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then

and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 1 box each of mica, iron hinges, electric incandescent lamps, hand tools, iron wedges, garbage cans, tinware, aluminum utensils, 1 bundle whips, 2 rolls wire cloth, 3 boxes dry cell batteries, 1 crate iron ware, 2 boxes horse shoe nails, 6 boxes lantern globes, and 3 boxes of paper ware, of an aggregate weight of, to wit, 718 pounds, for compensation, to wit, \$4.69, which said property was then and there moving in interstate commerce in the course of through transportation from Hibbard, Spencer, Bartlett and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a) Title 49, U. S. Code.)

Count 11

That on, to wit, August 21, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 1 box each of firearms, iron bolts, electric supplies, hand tools, leather goods, clothes filter, emery wheels, 2 boxes belt dressing, 3 boxes iron vise, 11 2 boxes enameled ware, 4 coils of rope, 3 boxes sheet iron tubes, 2 boxes grinders, 2 boxes wood handles, and 1 bundle of saws, of an aggregate weight of, to wit, 778 pounds, for compensation, to wit, \$3.93, which said property was then and there

moving in interstate commerce in the course of through transportation from Hibbard, Spencer, Bartlett and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a), Title 49, U. S. Code.)

Count 12

That on, to wit, August 7, 1939, Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line, defendant, then and there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways, including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Denver, Colorado, to Fort Collins, State and District of Colorado and within the jurisdiction of this Court, certain property, to wit, 1 box each electric appliances, breast drills, can openers, belt dressing, hand tools, iron washers, bottle cappers, corn knives, friction tape, calf weaners, stovepipe elbows, 2 boxes sweat pads, 2 boxes wire baskets, 4 boxes of tinware, 2 boxes aluminum articles, 2 boxes electric dry-cell batteries, 12 3 boxes electric lamps, and 3 boxes oil stoves, of an aggregate weight of, to wit, 540 pounds, for compensation, to wit, \$2.99, which said property was then and there moving in interstate commerce in the course of through transportation from Hibbard, Spencer, Bartlett and Company, Chicago, Illinois, consignor, to Toliver and Kinney Mercantile Company, at said Fort Collins, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.) Section 306 (a), Title 49, U. S. Code.)

Count 13

That on, to whit, July 20, 1939, Leamon Resler doing business as Resler Truck Line and as Brady Truck Line, defendant, then and

there being a common carrier by motor vehicle engaged in the transportation of property for the general public in interstate and foreign commerce by motor vehicle on public highways including those between the points hereinafter set forth, for compensation, unlawfully did knowingly and wilfully engage in an interstate operation on a public highway, in that he did transport by motor vehicle on public highways from Stratton, Nebraska, to a point seven miles from Loveland, State and District of Colorado, and within the jurisdiction of this Court, certain property, to wit, one 8-foot basin tiller and one bundle of 14 discs for one George A. Walker, for compensation, to wit, \$2.37, then and there without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (Section 306 (a), Title 49, U. S. Code.)

THOMAS J. MORRISSEY,
U. S. Attorney.

13

VERIFICATION

STATE OF COLORADO,

County of Denver, ss:

William F. Goodman, being first duly sworn upon his oath deposes and says:

That he is an employee of the United States Government, to wit, a Special Agent of the Bureau of Motor Carriers of the Interstate Commerce Commission; that in the course of his duties as such Special Agent he made investigation of the matters set forth in the above and foregoing Information against Leamon Resler, doing business as Resler Truck Line and as Brady Truck Line; that he has read the above and foregoing Information and knows the contents thereof, and the matters therein set forth are true of his own knowledge.

WILLIAM F. GOODMAN.

Subscribed and sworn to before me this 11th day of July 1940.
My commission expires February 24, 1941.

[NOTARIAL SEAL]

LUCILLE RIEDE MONTGOMERY,
Notary Public.

14 In United States District Court for the District of Colorado

[Title omitted.]

Motion to quash information

Filed August 23, 1940.

Comes now the defendant in the above entitled matter by his attorney, Marion F. Jones, and moves to quash the information heretofore filed in the above entitled matter, relying upon the following facts and circumstances:

I

That on April 11, 1939, defendant transmitted to the Interstate Commerce Commission, Washington, D. C., an application, in due and regular form, executed in compliance with the rules and regulations of the Interstate Commerce Commission, to transfer to himself the operating rights under MC 61610 from C. J. Brady, doing business at Brady Truck Lines, which operating rights included the right to engage in interstate commerce between Denver, Colorado, and Fort Collins, Colorado; that said application was on file with the Interstate Commerce Commission during all the periods covered by said information; that on April 11, 1939, and thereafter during all periods covered by said information, defendant neither owned nor operated twenty (20) motor vehicles, and in said transfer not more than twenty (20) motor vehicles, as defined by Section 213 (e) of the Motor Carrier Act, 1935, as amended, were involved.

II

That defendant having acquired the rights of C. J. Brady to operate in interstate commerce between Denver, Colorado, and Fort Collins, Colorado, was not in violation of Section 206 (a) of the Motor Carrier Act, 1935, as amended; that the Interstate Commerce Commission is without jurisdiction, under the provisions of Section 213 (e), to approve or disapprove a transfer where the total number of motor vehicles involved is not more than twenty (20).

MARION F. JONES,
Marion F. Jones,
Attorney for Defendant.

526 DENHAM BUILDING, DENVER, COLORADO,
August 19, 1940.

In United States District Court for the District of Colorado

9197

THE UNITED STATES OF AMERICA

vs.

LEAMON RESLER, DOING BUSINESS AS RESLER TRUCK LINE AND
AS BRADY TRUCK LINE

Order granting motion to quash

Sept. 20, 1940

At this day comes Joseph N. Lilly, Esquire, Assistant District Attorney, and the defendant by Marion F. Jones, Esquire, his attorney, also comes. And the motion of the defendant to quash the information herein coming on now to be heard, is argued by counsel, and the court having considered the same and being now fully advised in the premises;

It is ordered by the court, for good and sufficient reasons
16 to the court appearing, that the said motion be, and the same
is hereby granted as to counts one, two, three, four, five,
six, seven, eight, nine, ten, eleven, and twelve of the information
herein.

In United States District Court for the District of Colorado

[Title omitted.]

Petition for appeal

Filed October 18, 1940

To the Honorable J. FOSTER SYMES, Judge of said Court:

Now comes your petitioner, United States of America, plaintiff in the above entitled cause, by Thomas J. Morrissey, its attorney, and shows the Court that heretofore, on, to wit, September 20, 1940, this Court, after the defendant had filed a motion to quash all counts of the information filed herein, and thereafter and before argument thereon orally amended such motion limiting the applicability thereof to the first twelve counts of the information, and after argument thereon entered an order granting said motion of the defendant as to the first twelve counts of the information; that said motion of the defendant was a special plea in bar of the causes of action set out in the first twelve counts of the information and of further prosecution under the said counts

of the information herein, whereby, and by reason whereof, a decision, sustaining the said special plea in bar of said first twelve counts of the information, was rendered by the Court
17 herein, and your petitioner further shows to the Court that said defendant has not been by the said decision of said Court, and has not been, by the said proceedings in said Court, put in jeopardy, all of which will more fully appear from the record of this cause in the office of the Clerk of this Court.

Your petitioner, therefore, represents that the action taken by said Court, in granting said motion to quash the first twelve counts of the information, is error, and is not supported by the record in said cause and proceedings, and that manifest and prejudicial error has intervened to the damage of your petitioner by reason thereof, as will more fully appear in the within assignment of errors which is presented and filed herewith, and considered a part thereof.

Wherefore, and to the end that said errors may be corrected, your petitioner prays an appeal in said cause from the District Court of the United States for the District of Colorado to the Supreme Court of the United States as by law provided; that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents, upon which said action was taken by said Court, duly authenticated, be sent to the said Supreme Court of the United States, under the rules of said Court in such cases made and provided.

Your petitioner further prays that pursuant to statute in such case made and provided no bond or surety be required of it.

THOMAS J. MORRISSEY,

*United States Attorney for the District of Colorado,
Attorney for the United States of America, Plaintiff.*

Oct. 18, 1940.

18 In United States District Court for the
District of Colorado

[Title omitted.]

Order allowing appeal

Filed October 18, 1940

Now on this 18th day of October, there is presented to the Court the petition of the plaintiff, United States of America, praying for an appeal herein to the Supreme Court of the United States, and it appearing to the Court that there has been filed with said

petition for appeal an assignment of errors, setting forth separately and particularly each error asserted and intended to be urged.

It is therefore ordered by the Court that an appeal be, and the same is, hereby allowed said plaintiff, United States of America, as provided by law, to the Supreme Court of the United States, to review the decision, proceedings and action taken by the Court in this case, wherein the Court granted the special plea of the defendant, denominated a motion to quash, which said motion was orally amended by the defendant before argument thereon so as to limit its applicability only to the first twelve counts of the information; that citation issue as provided by law; that a full transcript of the proceedings in this case be, by the Clerk of this Court, presented and filed with the Clerk of the Supreme Court of the United States, and that pursuant to statute, in such case made and provided, no supersedeas bond, or cost bond, or surety for the same, need be filed herein by said plaintiff,

19 United States of America.

Dated at Denver, Colorado, this 18 day of October 1940.

J. FOSTER SYMES,
*Judge of the United States,
District Court for the District of Colorado.*

In United States District Court for the District of Colorado.

[Title omitted.]

Assignment or errors

Filed October 18, 1940

Now comes the United States of America, plaintiff above named, by Thomas J. Morrissey, United States Attorney, in and for the District of Colorado, its attorney, and having heretofore filed its petition for appeal herein, says that in the record and proceedings, and in the action taken by said Court, in granting the special plea of the defendant, denominated a motion to quash, which said motion was orally amended before argument so as to limit its applicability only to the first twelve counts of the information filed herein, there has intervened manifest and prejudicial error, to the prejudice of the plaintiff, United States of America, in the above entitled cause.

The said errors so intervening are enumerated as follows, to wit:

- 20 1. The Court erred in granting the special plea in bar, denominated a motion to quash, filed by the defendant herein.
2. In construing section 213 (e) of the Motor Carrier Act, 1935, as amended (49 U. S. Code Sec. 313 (e)), as applicable to Section 212 (b) of said Act (49 U. S. Code Sec. 312 (b)).
3. In failing to apply Rule 1 (d) of the rules and regulations promulgated by the Interstate Commerce Commission July 1, 1938, effective September 1, 1938, governing transfers of rights to operate as a motor carrier in interstate or foreign commerce.
4. In the construction of section 213 of the Motor Carrier Act, 1935, as amended (49 U. S. Code Sec. 313).
5. In the construction of section 212 (b) of the Motor Carrier Act, 1935, as amended (49 U. S. Code Sec. 312 (b)).

Wherefore, the plaintiff, United States of America, respectfully prays that the action taken by said Court, in granting said special plea, denominated a motion to quash, filed herein by the defendant, be set aside, and held for naught.

THOMAS J. MORRISSEY,
United States Attorney for the District of Colorado,
Attorney for the United States of America, Plaintiff.

OCT. 18, 1940.

- 29 In United States District Court for the District of Colorado

[Title omitted.]

Stipulation as to admission of certain facts

Filed Nov. 4, 1940

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which has been allowed herein to the Supreme Court of the United States and advising such Court of certain admissions made in open Court by the parties hereto upon the argument of the defendant's motion to quash,

1. That the defendant's motion to quash was orally amended at the hearing upon said motion so that the same became applicable only to the first twelve counts of the information.
2. That the defendant on, to wit, April 14, 1939, filed an application with the Interstate Commerce Commission for authority

to transfer to himself the operating rights held by C. J. Brady under docket number MC 61610, and that such application was on file with the Interstate Commerce Commission during all the periods covered by the information, but that such application to transfer had never been approved by said Commission.

3. That not more than twenty vehicles were involved in such transfer.

Denver, Colorado, November 4, 1940.

THOMAS J. MORRISSEY,
Attorney for Plaintiff.
MARION F. JONES,
Attorney for Defendant.

30 In United States District Court for the District of Colorado

[Title omitted.]

Docket entries

- July 25, 1940—Order: Leave to file information. 83/165.
" " " —Information.
Aug. 23, 1940—Motion to quash information.
Sept. 20, 1940—Order: Motion to quash information sustained as to first 12 counts. 83/385.
Oct. 11, 1940—Praecipe—3 certified copies. 83/385 to U. S. Atty.
" 18, " —Petition for appeal to Supreme Court.
" " " —Order allowing appeal. 83/553.
" " " —Statement of jurisdiction.
" " " —Assignment of errors.
" " " —Citation issued—Ret 60 days and to Marshal.
" 19, " —Marshals affidavit of service of copy of petition—
Order allowing appeal—assignments of error—
copy of statement and original statement—
directing attention to Paragraph 3, Rule 12, of
Supreme Court Rules.
" " " —Marshals return service citation at Denver
10/19/40.
" " " —Marshals return copy directing attention to para-
graph 3, Rule 12, SCR at Denver 10/19/40.
" 25, " —4 copies of 83/385—one certified—to U. S. Atty.
Nov. 4, " —Stipulation re certain admissions.
" " " —Praecipe for transcript of record.

In United States District Court for the
District of Colorado

[Title omitted.]

Praeclipe for transcript of record

Filed Nov. 4, 1940

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which has been allowed herein to the Supreme Court of the United States, the clerk of this Court is requested to prepare and forward to the clerk of the Supreme Court of the United States a transcript of the record on appeal which shall include only the following portions of the record:

1. Information.
2. Defendant's motion to quash.
3. Order sustaining defendant's motion to quash.
4. Petition for allowance of an appeal, and order allowing same.
5. Assignment of errors.
6. Statement of jurisdiction.
7. Citation to defendant and affidavit of service thereof upon defendant.
8. Statement calling attention of defendant to the provisions of paragraph 3 of rule 12 of the United States Supreme Court, and affidavit of service thereof.
9. Affidavit of service upon the defendant of copy of petition for allowance of appeal, copy of order allowing appeal, copy of assignment of errors, copy of statement of jurisdiction, and original statement directing attention to the provisions of paragraph 3, rule 12 of the rules of the United States Supreme Court.
10. Stipulation dated November 4, 1940.
11. Docket entries.
12. This praecipe.

Denver, Colorado, November 4, 1940.

THOMAS J. MORRISSEY,
Attorney for Plaintiff.
MARION F. JONES,
Attorney for Defendant.

33 [Citation in usual form showing service on Leamon Resler omitting in printing.]

34 [Clerk's certificate to foregoing transcript omitted in printing.]

35

In United States District Court ~~for~~ the
District of Colorado

[Title omitted.]

Supplemental stipulation

Filed Nov. 20, 1940

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which has been allowed herein to the Supreme Court of the United States and advising such Court of certain facts admitted to be true,

1. That the application filed by the defendant on, to wit, April 14, 1939, with the Interstate Commerce Commission, for authority to transfer to himself the operating rights held by C. J. Brady under docket number MC 61610, referred to in paragraph 2 of a stipulation between the parties hereto, filed with the Clerk of this Court on November 4, 1940, was dismissed by said Commission on October 17, 1939, at the instance and request of the applicant, the defendant herein.

2. That this supplemental stipulation be filed with the Clerk of the United States District Court for the District of Colorado, and that the Clerk thereof include the same as part of the record on appeal in this case.

Denver, Colorado, November 20, 1940.

THOMAS J. MORRISSEY,
Attorney for Plaintiff.
MARION F. JONES,
Attorney for Defendant.

36

Supreme Court of the United States

[Title omitted.]

*Statement of points to be relied upon and designation of record
for printing*

Filed Dec. 10, 1940

I

Pursuant to Rule 13 of this Court, the United States of America, appellant, states that in its brief and oral argument on its appeal in the above entitled cause it will rely upon the points hereinbelow stated:

(1) The District Court erroneously sustained the plea in bar, denominated a motion to quash, filed and urged by the defendant.

(2) The Court erroneously failed to overrule and dismiss the said plea in bar.

(3) The Court erred in holding and adjudging that there was in force with respect to the defendant Resler a certificate of public convenience and necessity or its equivalent authorizing him to engage in interstate operations on the public highways between Denver and Fort Collins, both in the State of Colorado, as a common carrier by motor vehicle.

(4) The Court erred in holding and adjudging that the transfer to defendant Resler of the interstate operating rights held by Brady by virtue of an order of the Interstate Commerce Commission dated March 17, 1938 (entered in its Docket No. MC-61610), authorizing him to operate as a common carrier by motor vehicle on the public highways between said Denver and Fort Collins was effective, and that said rights and order were in force with respect to the defendant Resler, without the approval of the Interstate Commerce Commission.

(5) The Court erred in holding and adjudging that the Interstate Commerce Commission had no authority under section 212 (b) of the Motor Carrier Act, 1935, or otherwise, to require by its rules and regulations approval by the Commission for transfer of such operating rights from Brady, a common carrier by motor vehicle, to the defendant Resler, a common carrier by motor vehicle.

(6) The Court erred in holding and adjudging that the provisions of section 213 (e) of the said act are applicable to transfers of certificates, permits, and operating rights otherwise evidenced and recognized by said act, from one motor carrier to another where less than 21 vehicles are involved.

(7) The Court erred in holding and adjudging that such transfers in such cases are not subject to the provisions of section 212 (b) of the act insofar as approval for such transfers by the Interstate Commerce Commission is concerned.

(8) The Court erred in holding and adjudging that the "Rules and Regulations Governing Transfers of Rights to Operate as a Motor Carrier in Interstate or Foreign Commerce" adopted by the Interstate Commerce Commission on the first day of July, 1938, effective September 1, 1938, were not applicable and could not lawfully be applied to the transfer to defendant Resler of the operating rights granted by the Interstate Commerce Commission to the said Brady by its said Order of March 17, 1938.

II

United States of America, appellant, states that in its brief and oral argument on its appeal in the above entitled cause it

38 will rely upon the points stated in its assignment of errors therin in addition to the points above enumerated.

III

The entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellant and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

December 7, 1940.

FRANCIS BIDDLE,
Solicitor General.

Service on December 2nd, 1940, of a copy of the above Statement of Points and Designation of Record to be Printed is hereby acknowledged.

MARION F. JONES,
Counsel for Appellee.

[Endorsement on cover:] File No. 44965. Colorado, D. C. U. S. Term No. 616. The United States of America, Appellant vs. Leamon Resler and Leamon Resler, Doing Business as Resler Truck Line and as Brady Truck Line. Filed December 10, 1940. Term No. 616 O. T. 1940.